BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

REPLY COMMENTS OF GRANITE TELECOMMUNCIATIONS, LLC

Granite Telecommunications, LLC ("Granite") respectfully submits these comments in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released on February 9, 2011, in the above-referenced dockets ("NPRM"). Specifically, Granite replies herein to the comments filed to date concerning the various proposals presented in the NPRM for reform of the state and federal intercarrier compensation regimes, insofar as such comments and certain of the proposals they support fail to fully account for the unique attributes of the service provided by providers, such as Granite, that aggregate at wholesale the services of multiple local exchange carriers ("LECs") in order to provide competitive retail telecommunications services on a nationwide basis. Granite respectfully submits that resale competition benefits consumers, consistent with the intent of applicable federal law, and must be recognized by the Federal Communications Commission ("Commission" or "FCC") and not disadvantaged in the implementation of intercarrier compensation reform.

Introduction

Granite provides the innovative services and competition, and its customers[1] reap the consumer benefits, that the Telecommunications Act of 1996 ("1996 Act") was enacted to promote.[2] Indeed, Granite has built a thriving company, serving over 14,000 corporate clients in over 240,000 locations and employing more than 850 people, founded upon the competitive framework embodied in the 1996 Act and its implementing regulations. As the Commission is aware, resellers' price margins (the difference between what the reseller pays the underlying carrier for service, and the amount it can charge the end-user customer) are slim, so Granite and other resellers compete largely on service. Granite's success is in no small part a function of the company's ability to offer its large, multi-location business customers the convenience and cost-savings of having one point of contact, available 24/7/365, one bill, customized to fit their needs, and one telecommunications company, offering nationwide service, coast to coast and border to border. Granite's outstanding customer service has, in turn, the beneficial effect of raising the bar in the marketplace for other providers, to the benefit of consumers.

However, the precipitous and one-sided intercarrier compensation reform proposals being promoted by certain large, incumbent providers and a handful of other self-interested parties threaten to undermine the foundation on which robust, multi-party telecommunications competition has been built. While there is no doubt that the existing intercarrier compensation regime is in need of reform, such reform should be undertaken in an incremental, measured way that affords the market, and – most importantly – telecommunications consumers, the

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[1] Granite's customers include two-thirds of the nation's Fortune 100 companies, and Granite's customer retention rate is more than five times higher than the industry average.

[2] Congress described the 1996 Act as, *inter alia*, an act to promote competition in order to secure lower prices and higher quality services for American telecommunications consumers. (*See* S.652-ENR, 104th Congress.)

opportunity to adapt to new pricing models. Similarly, it is important that the state and federal regulatory community be afforded the time necessary to assess the effects of each step in the reform process and make reasoned adjustments as necessary along the way, to avoid fracturing the bedrock expectations on which telecommunications competition has been built. This Rome wasn't built in a day; it should not be dismantled so quickly.

The Existing Allocation of Authority Between State and Federal Regulators Must Be Preserved

Granite concurs with the views of the many commenters who have expressed concern that any reform proposal usurping the authority of state commissions to set intrastate access charge rates would violate federal law and unnecessarily disrupt well-established and reliable rate-setting mechanisms. The arguments of Verizon, AT&T and XO Communications, for example, in support of Commission preemption of state authority to regulate intrastate rates are disingenuous and self-serving.[3] A majority of commenters, including state commissions,[4] NARUC,[5] NASUCA,[6] and others,[7] argue persuasively that Section 252 of the Communications

[3] *See* Comments of Verizon and Verizon Wireless, dated April 18, 2011, at 26-46; Comments of AT&T Inc., dated April 18, 2011, at 44-45; Comments of XO Communications, LLC, dated April 18, 2011, at 12-15.

[4] *See* Initial Comments of the Indiana Utility Regulatory Commission, dated April 18, 2011, at 11-12 (asserting that the FCC's proposal to apply section 251(b)(5) to all traffic, including intrastate traffic, is a "substantial encroachment" on the "exclusive jurisdiction of state commissions" and is a "direct assault on Congressional intent."); and Comments of the New York Public Service Commission, dated April 18, 2011, at 7-12 (arguing that the "state is the jurisdictional entity best positioned to take primary responsibility for deciding upon rate designs" which will likely "differ from company-to-company based on, among other things, existing local service rates, current access charge revenues and forward-looking commitments to local investment.").

[5] Initial Comments of the National Association of Regulatory Utility Commissioners ("NARUC"), dated April 18, 2011, at 9-13.

[6] Comments of the National Association of State Utility Consumer Advocates ("NASUCA"), at 93-95.

[7] *See, e.g.,* Comments of Core Communications, Inc., dated April 18, 2011, at 17; and Comments of John Staurulakis, Inc., dated April 18, 2011, at 17 (asserting doubt that "the Commission will prevail in preempting the states on this matter").

Act of 1934 ("Communications Act"),[8] which preserves for the states authority over intrastate telecommunications, cannot be so lightly overridden.

All Providers Should Participate in the Intercarrier Compensation Regime, At Levels Adequate to Recover Their Costs

With the increasing migration of telecommunications services to IP platforms, Granite, like the vast majority of commenters in this proceeding, agrees that it is appropriate to place Voice over Internet Protocol ("VoIP") services on equal footing with other types of providers in the intercarrier compensation regime. That said, as perhaps the largest competitive provider of analog access lines in the nation, with over one million lines, Granite is acutely aware of the quite disparate costs associated with providing services from various platforms, and believes strongly that both the law and common sense require carriers to be compensated for providing access and transport services in accordance with their costs to do so. For this reason, it would be arbitrary and capricious, and in clear violation of the Communications Act, for the Commission to mandate intercarrier compensation at either a $.0007 or zero (bill-and-keep) rate, as Verizon, AT&T, and Sprint, among others, have proposed.

Granite's commercial agreements with the underlying carriers from which it purchases lines at wholesale require it to pay an average rate per originated and terminated call that is several times the cost that Granite would be able to recoup if the access charge rate were to be arbitrarily set at $.0007. Clearly, in such a scenario, Granite would quickly go broke, since the margins on resold service are inadequate to enable resellers to recover the difference between their actual costs and the amount they can charge their end-user customers. Accordingly, were

[8] 47 U.S.C. §252.

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the Commission to acquiesce to the demands of the ILECs and other large carriers and mandate a \$.0007 rate or zero (bill-and-keep), the Commission would effectively be electing to extinguish resale as a viable mode of competition – a result patently at odds with Congressional intent as expressed in the 1996 Act.

In its need to recoup the actual cost of origination of eligible calls and transporting and terminating traffic to its end-user customers, Granite is positioned similarly to the rural carriers, whose costs are objectively higher, traffic patterns are manifestly different, and ability to simply charge customers more or leverage economies of scale to make up any shortfall is constrained.[9] As, for example, the Missouri Small Telephone Company Group points out in its comments, any proposal to require a provider to originate eligible calls and transport or terminate traffic at a reimbursement rate less than its actual cost would be "unreasonable and confiscatory."[10] A confiscatory reimbursement rate for mandated services is, of course, also unlawful.

Changes to the Current Regime Should Be Gradual, With An Adequate Glidepath to Enable Market Adaptation and Mid-Course Correction as Needed

Granite agrees with the commenters that have expressed concern about the disruptive and potentially disabling impact of precipitous changes in the intercarrier compensation regime on both competition and consumers.[11] Telecommunications companies, Granite included, have

[9] *See, e.g.,* Comments of the Independent Telephone & Telecommunications Alliance, dated April 18, 2011, at 41; *see also* Core Communications Comments at 17; and NASUCA Comments at 10, 92.

[10] *See* Initial Comments of Missouri Small Telephone Company Group, dated April 18, 2011, at 8-9 ("proposals are unreasonable and confiscatory . . ." and would not cover the "costs of billing for the traffic, much less any reasonable costs for the use of their networks").

[11] *See* Level 3 Comments at 7 (proposing a glide path of nine years); SureWest Comments at 14 (proposing a seven to ten year glide path); and Missouri Small Telephone Company Group Initial Comments at 10 (proposing a minimum glide path of five years).

priced their services and built their business models based on good faith expectations formed by the existing rules. While one should expect that the rules would evolve over time in accordance with developments in the marketplace, the intercarrier compensation regime has remained largely static for more than a decade, and changes should not now be imposed in a manner that abruptly advantages certain providers to the competitive detriment of others. It is not the regulators' role to dictate, via regulation, winners and losers in the marketplace. Rather, the rules should be adjusted based on objective principles, in accordance with law, and implemented on a timeline that reflects the time it took to get where we currently are.

A gradual implementation "glidepath" will both (1) allow regulators to ensure that each incremental rule change has the intended effect, and (2) give providers and consumers a fair opportunity to adapt their business plans and budgets to the new regime. Granite commends the Commission for recognizing the importance of a measured transition period in the NPRM, which states: "As we proceed with USF and ICC reform, we intend to avoid sudden changes or 'flash cuts' in our policies, acknowledging the benefits of measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption."[12]

The Commission in the NPRM,[13] and certain commenters, suggest that subjecting existing commercial agreements to a "fresh look" would enable the acceleration of changes to the intercarrier compensation regime, by allowing end-user charges to be modified to accommodate an abrupt recalibration of intercarrier compensation rates. This optimism regarding the results that could be achieved with a "fresh look" is misplaced. Even a small company may have dozens of commercial agreements that would require modification, resulting

[12] NPRM, at ¶ 12.

[13] NPRM, at ¶ 689.

in enormous transaction costs. More importantly, the "fresh look" proposal overlooks the gross disparity in bargaining power between large LECs and the resellers and CLECs that depend on commercial agreements with them. Taking a "fresh look" at all of its existing wholesale agreements[14] would require the investment of enormous resources on Granite's part, with little leverage and no guarantee that it could negotiate commercially reasonable accommodations from underlying carriers that have little incentive to preserve resale competition.

The Rules Should Not Incorporate <u>Onerous and Unwarranted Presumptions</u>

Granite urges the Commission to exercise extreme care to ensure that, in the effort to end the manifestly abusive practices of a small minority of providers, legitimate providers of important competitive services are not burdened with onerous and unwarranted presumptions that will require undue time and money to overcome. For example, some commenters have endorsed CTIA's proposal, on which the Commission requested comment in the NPRM,[15] that if a LEC's terminating to originating traffic exceeds a 3:1 ratio, it would be subject to bill-and-keep (*i.e.*, a zero reimbursement rate for terminating access). Although a 3:1 traffic imbalance may, in some instances, be indicative of an access stimulation scheme warranting reduction in the amount of the terminating provider's access charges, this should by no means be assumed. In Granite's case, virtually all of its approximately one million access lines serve the premises of national retailers, restaurant chains, and other customer-facing businesses. These lines naturally are used for far more incoming calls than outgoing calls. Imagine, for example, a pizza parlor or

[14] Granite does not require its end-user customers to enter into long-term contracts – a key differentiator between Granite and most of its LEC competitors.

[15] NPRM, at ¶ 672.

a "big box" electronics store: customers call in with dozens, perhaps hundreds of orders or questions for each outbound call placed by an employee of the business. This is not an illegitimate access stimulation scheme, but rather ordinary commerce of the sort that the modern telecommunications industry is designed to support. And, because Granite's commercial agreements typically require Granite to pay the underlying carrier for each terminated call, there is no windfall for Granite in collecting terminating access charges on these calls. To the contrary, if the terminating access payment to Granite were $.0007 or zero (*i.e.*, bill-and-keep), Granite would lose money on every single pizza order or call by a customer to find out the electronics store's hours.[16] The cost of overcoming a misapplied presumption should not be underestimated, and the burden falls harder, the smaller the company on which it lands.

Conclusion

Granite respectfully submits that the path to intercarrier compensation reform most compatible with the requirements of applicable law and the Commission's stated goal to foster a competitive, innovative, and consumer-friendly marketplace, is a path comprised of the following incremental steps:

- States should retain authority to regulate intrastate access charges;
- Providers should be compensated for originating eligible calls, and transporting and terminating voice traffic, at a level commensurate with the provider's actual costs;
- Implementation of rate changes should occur in stages, subject to review and adjustment at each step, and follow a 7-10 year glidepath, to avoid disruption to existing intercarrier and customer relationships and unintended (and potentially irreversible) competitive consequences; and

[16] *See* Reply Comments of Paetec Holding Corp., MPower Communications Corp. and U.S. Telepacific Corp., dated April 18, 2011, at 9-11 (explaining that the "3:1 ratio test, as applied to *access* traffic, will result in many false positives").

- The Commission should avoid implementing presumptions that risk burdening the provision of legitimate services.

Respectfully submitted,

L. Elise Dieterich

L. Elise Dieterich
Kathy L. Cooper
Counsel for Granite Telecommunications, LLC

Sullivan & Worcester LLP
1666 K Street N.W., Suite 700
Washington, DC 20006
(202) 775-1200

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